

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

MOBILE EQUITY CORP.,

*Plaintiff,*

v.

WALMART INC.,

*Defendant.*

Civil Action No. 2:21-cv-00126-JRG-RSP

**JURY TRIAL DEMANDED**

**DEFENDANT WALMART INC.'S OPPOSED MOTION TO MOVE TRIAL DATE AND  
FOR A SPECIAL TRIAL SETTING ON JULY 18, 2022 OR DATE SOON  
THEREAFTER THAT IS CONVENIENT FOR THE COURT**

COMES NOW Defendant Walmart Inc. ("Walmart") and respectfully requests the Court to move the current trial date of June 6, 2022 in the Eighth Amended Docket Control Order entered by the Court on March 30, 2022 (Dkt. No. 297), and specially set jury selection and trial in this case to commence on July 18, 2022 or a date soon thereafter that is convenient for the Court.

I.

On March 30, 2022, the Court entered the Eighth Amended Docket Control Order, *sua sponte*, resetting jury selection and trial from May 23, 2022 to June 6, 2022. The June 6 date poses significant conflicts and scheduling difficulties to Walmart, including client representative conflicts and witnesses with previous trial settings that week for Walmart. Specifically, Walmart's damages expert Dr. Keith Ugone has two previously set trials (*Acronic Inc. (f/k/a Alcoa Inc.) vs. Universal Alloy Corporation*; In the United States District Court for the Northern District of Georgia; Case No. 1:15-cv-01466-ELR and *Tortilla Factory, LLC vs. GT's Living Foods, LLC and Does 1 through 10*; In the United States District Court for the Central District of

California, Case No. 2:17-cv-007539-FMO-GJS) from June 6 – June 20. Additionally, Walmart’s 30(b)(6) witness, Mr. Daniel Eckert, has informed counsel that he has a pre-existing meeting in New York on June 7 and June 8 at which his attendance is required. Mr. Eckert has informed counsel that he would not be able to readily reschedule this meeting. In view of the travel time from New York after said meeting, Walmart is concerned that Mr. Eckert would not be able to arrive in Marshall, Texas in time to testify at trial. Furthermore, Walmart’s in-house counsel who is responsible for this case, Mr. John Kinton, has a prior international, non-refundable, travel commitment for his 30<sup>th</sup> wedding anniversary during this time.

## II.

After the Court entered the Eighth Docket Control Order, Walmart promptly reached out to Plaintiff Mobile Equity Corp. (“MEC”) about the scheduling conflict to identify the next available date after June 6 on which both sides and their witnesses are available. MEC opposes this motion because one of its witnesses currently has a conflict with a July 18 trial setting.

## III.

For all of the foregoing reasons, Walmart respectfully requests the Court vacate the current trial date of June 6 and specially set trial in this case to commence on July 18, 2022 or another date soon thereafter that is convenient for the Court, and amend the current Eighth Amended Docket Control Order (Dkt. No. 297) as shown below. Walmart understands that one of MEC’s witnesses currently has a conflict with a July 18 trial setting and accordingly, should that scheduling conflict not resolve itself, Walmart will work with MEC to timely submit to the Court the parties’ additional availability for the parties so as to avoid any undue burden on either party.

<b>Original</b>	<b>Proposed</b>	
June 6, 2022	July 18, 2022 (or another date soon)	*Jury Selection — 9:00 a.m. in <b>Marshall, Texas</b>

	thereafter that is convenient to the Court)	<b>(Special Setting)</b>
April 25, 2022		* If a juror questionnaire is to be used, an editable (in Microsoft Word format) questionnaire shall be jointly submitted to the Deputy Clerk in Charge by this date. <sup>1</sup>
April 20, 2022		*Pretrial Conference — 9:00 a.m. in <b>Marshall, Texas</b> before Judge Roy S. Payne
April 11, 2022		*Notify Court of Agreements Reached During Meet and Confer  The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i> . The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
April 11, 2022		*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions <i>in Limine</i> , Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations

(\*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

#### IV.

This request is not made for delay, but so that justice may be served.

WHEREFORE, Defendant Walmart Inc. respectfully prays that the jury selection and trial date be moved to July 18, 2022 or to a date soon thereafter that is convenient to the Court. A proposed order, including a complete Ninth Amended Docket Control Order reflecting this change, is filed herewith.

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<sup>1</sup> The Parties are referred to the Court's Standing Order Regarding Use of Juror Questionnaires in Advance of *Voir Dire*.

Dated: April 8, 2022

Respectfully submitted,

By: /s/ Eric H. Findlay

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***COUNSEL FOR DEFENDANT  
WALMART INC.***

**CERTIFICATE OF CONFERENCE**

This is to certify that counsel for Defendant has complied with the meet and confer requirement in Local Rule CV-7(h). Counsel for Defendant conferred with counsel for Plaintiff, and Plaintiff is opposed to the request the relief sought in this motion.

/s/ Eric H. Findlay  
Eric H. Findlay

**CERTIFICATE OF SERVICE**

I hereby certify that on April 8, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ Eric H. Findlay  
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